



The Comptroller General
of the United States

Washington, D.C. 20548

Harwitz

Decision

Matter of: Integrated Protection Systems, Inc.

File: B-229985

Date: January 29, 1988

DIGEST

1. An offeror may elect not to charge for an item if it indicates a commitment to furnish the item without charge by inserting \$0.00 or N/C.
2. The Federal Acquisition Regulation's requirement for the integrity of unit prices is not violated by a bid containing allegedly disproportionate prices where that pricing method has not been shown to have worked to the prejudice of the protester.
3. Protest based on alleged improprieties in solicitation is not timely where protest was not filed prior to the closing date for receipt of initial proposals.

DECISION

Integrated Protection Systems, Inc. (IPS), protests the award of contract under solicitation No. DAKF19-87-R-0130, issued by the Department of the Army for security systems to be installed at various Army Reserve centers in Kansas, and Nebraska.

IPS alleges that the Army acted improperly by accepting the awardee's proposal which was, in part, either not responsive or erroneously priced. Additionally, IPS alleges that the Army's request for proposals (RFP) was overly vague and therefore, legally objectionable.

We dismiss the protest in part and deny it in part.

In competing for the contract, the offerors submitted proposals to the Army with their total prices broken down by individual (line item) prices. The awardee's price for one such line item (001AC Emergency Maintenance) was \$0.00. IPS contends that \$0.00 is not a "price" and therefore the awardee's proposal was not responsive to the RFP.

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We have held that an offeror may elect not to charge for a certain item and if it indicates a commitment to furnish the item in question, as by inserting "\$0" in its offer, its offer is responsive. See Aztech Electric, Inc. and Rod's Electric, Inc., B-223630, Sept. 30, 1986, 86-2 CPD ¶ 368.

Therefore, there is nothing improper about the awardee, in this matter, submitting a line item price of \$0.00. It merely demonstrates the awardee's willingness to perform the particular service at no cost to the Army.

IPS alleges, however, that to offset lost profits from not charging for emergency maintenance, the awardee charged more for other services, thereby violating the integrity of unit price provision, Federal Acquisition Regulation § 52.215-26.

FAR § 52.215-26 requires that offerors distribute costs within contracts on a basis that ensures that unit prices are in proportion to the item's base costs and, therefore, prohibits methods of distributing costs to line items that distort unit prices. However, to set aside an award of contract under that provision, the protester must demonstrate that it was prejudiced by the awardee's pricing methods. Dresser Industries, Inc., B-227904, Sept. 11, 1987, 87-2 CPD ¶ 237. IPS has alleged only a violation of the requirement and has made no attempt to demonstrate how the awardee's pricing could have resulted in its obtaining any unfair competitive advantage, or could have been prejudicial to other offerors. Nor is such a result apparent to in these circumstances. Accordingly, we find the deviation, if any, without significance. See Kitco, Inc., B-221386, Apr. 3, 1986, 86-1 CPD ¶ 321.

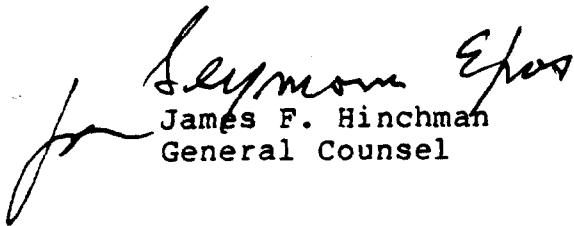
IPS argues, alternatively, that the award is objectionable since the awardee will have to perform the line item service at a loss in order to satisfy its commitment to the Army. The service costs the awardee something, so to charge nothing means that the awardee is offering a below-cost service.

IPS's argument is without merit, however, as there is nothing legally objectionable about a contracting agency accepting a below cost proposal from a responsible offeror. Environmental Technology Corp., B-225479.3, June 18, 1987, 87-1 CPD ¶ 610. So long as the contracting agency has a bona fide belief that the offeror will be able to perform under the contract, it is free to accept a below-cost offer. Id.

IPS lastly argues that the Army's RFP was legally objectionable because it included in the total price of the procurement, discretionary emergency service. The Army might never need to use the service or it may use it frequently, and therefore IPS believes, the estimated price of emergency service should not have been requested by the RFP, because it distorts the total price amount.

Regardless of the merits of this argument, our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987), require that protests based upon alleged improprieties in a solicitation be filed prior to the closing date for receipt of initial proposals. Since protest was not filed within that time frame, it will not be considered here.

The protest is dismissed in part and denied in part.

James F. Hinchman
General Counsel